

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of:

MICHAEL MOON,

Petitioner.

Case No. 5152

OAH No. 2014030001

DECISION

This matter was heard before a quorum of the Board of Pharmacy in Sacramento, California, on March 17, 2014. The quorum was comprised of Stanley C. Weisser, R.Ph. President; Rosalyn Hackworth; Albert Wong, PharmD; Lavanza "Kercheryl" Butler, PharmD; Allen Schaad, R.Ph.; Debbie Veale, R.Ph.; Greg Lippe; and Victor Law, R.Ph. Linda A. Cabatic, Administrative Law Judge, State of California, Office of Administrative Hearings, presided.

Deputy Attorney General Joshua A. Room appeared pursuant to Government Code section 11522.

Petitioner Michael Moon was present and represented himself.

The matter was submitted for decision on March 17, 2014.

FACTUAL FINDINGS

1. Petitioner Michael Moon was issued Pharmacist License No. RPH 42325 March 3, 1989. On June 26, 2009, an accusation was filed against petitioner that alleged unprofessional conduct as a result of his felony convictions for embezzlement of controlled substances, dangerous drugs and over-the-counter drugs from his employer Walgreens. In addition, the accusation alleged that he consumed controlled substances during his work shift. By decision effective June 9, 2010, the board found all allegations to be true and revoked petitioner's license. Petitioner was prohibited from seeking reinstatement for three years and should he seek reinstatement, he would be required to reimburse the board for its costs of investigation and prosecution in the amount of \$2,500.

2. Petitioner has had substance abuse issues (alcohol and opiates) since he was 15 years old. Petitioner's arrest in 2008 made him realize he needed help. Petitioner entered the Maximus Diversion Program on September 26, 2008, and was compliant with the program's requirements. Because of financial issues he voluntarily withdrew from the program in mid-June 2010. He continued attending the health services group, which was part of his Maximus program, and continued to be a member of the weekly relapse prevention group at the Cottage Outpatient Center in San Luis Obispo. While there, he attended three to four meetings of Narcotics Anonymous (NA) and/or Alcoholics Anonymous (AA) per week and graduated from the Cottage Outpatient Center on November 21, 2009.

3. In early January of 2011, petitioner began voluntary testing at Star Drug Testing in Santa Maria and set up an affordable program (twice monthly random observed 5-panel with alcohol.) In 2012, a friend introduced petitioner to a men's NA Step Study group. He met his sponsor at these meetings, as well as 10 other men he considers to be like brothers. He completed his Step work and continued to participate in other activities of NA. In addition to attending regular meetings, he has been the secretary for his Sunday morning Men's Stag meetings and started a new Tuesday morning open discussion group in November 2012. He also attends monthly steering committee meetings and three separate men's Step Study groups.

4. Petitioner stopped taking controlled substances on January 3, 2008, the date of his arrest. He continued to consume alcohol for approximately four months thereafter. Petitioner has been completely sober since August 3, 2008.

5. Petitioner completed his court-ordered payment of fines and fees and on May 12, 2011, petitioner's criminal convictions were expunged.

6. On July 25, 2013, the board received petitioner's Petition for Reinstatement of his pharmacist license. Petitioner submitted 30 certificates of completion for various continuing educational courses he took relating to the practice of pharmacy in 2011, and 22 certificates of completion from various continuing educational courses he took relating to the practice of pharmacy in 2012.

Petitioner submitted eight letters of recommendation, two of which were from pharmacists, all of whom speak highly of petitioner and his commitment to his recovery.

LEGAL CONCLUSIONS

Petitioner has demonstrated to the satisfaction of the board that he has rehabilitated himself to the extent it would not be against the public interest to reinstate his pharmacist license upon appropriate terms and conditions. Because of petitioner's history of alcoholism and substance abuse, he will be subject to the board's chemical dependence probationary conditions. In addition, because petitioner has not practiced for some time, he will be required to complete the take and pass the North American Pharmacist Licensure

Examination (NAPLEX) and the California Practice Standards and Jurisprudence Examination for Pharmacists tests as conditions precedent to licensure.

ORDER

The application of petitioner Michael Moon for reinstatement of licensure is granted. Upon successful completion and passage of the NAPLEX and the California Practice Standards and Jurisprudence Examination for Pharmacists licensing examinations within one year from the effective date of this order, Pharmacist License 42325 will be restored. The license will be immediately revoked, the revocation stayed, and the license will be placed on probation for three years on the following terms and conditions:

1. Obey All Laws: Petitioner shall obey all state and federal laws and regulations. Petitioner shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- a. An arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws.
- b. A plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- c. A conviction of any crime, discipline, citation, or other administrative action filed by any state or federal agency which involves petitioner's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

2. Report to the Board: Petitioner shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, petitioner shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. Interview with the Board: Upon receipt of reasonable prior notice, petitioner shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff: Petitioner shall cooperate with the board's inspection program and with the board's monitoring and investigation of petitioner's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

5. Continuing Education: Petitioner shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board or its designee.

6. Notice to Employers: During the period of probation, petitioner shall notify all present and prospective employers of the decision in case number 5152 and the terms, conditions and restrictions imposed on petitioner by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of petitioner undertaking any new employment, petitioner shall cause his or her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5152, and terms and conditions imposed thereby. It shall be petitioner's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If petitioner works for or is employed by or through a pharmacy employment service, petitioner must notify his direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in case number 5152 in advance of the petitioner commencing work at each licensed entity. A record of this notification must be provided to the board upon request. Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of petitioner undertaking any new employment by or through a pharmacy employment service, petitioner shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in case number 5152 and the terms and conditions imposed thereby. It shall be petitioner's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgments to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full time, part-time, temporary, relief or pharmacy management service as a pharmacist or any position for which a pharmacist license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant: During the period of probation, petitioner shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

8. Reimbursement of Board Costs: As a condition precedent to successful completion of probation, petitioner shall pay to the board its costs of investigation and prosecution in the amount of \$2,500. Petitioner shall make payments pursuant to the payment schedule agreed upon by the board or its designee.

There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by petitioner shall not relieve petitioner of his responsibility to reimburse the board its costs of investigation and prosecution.

9. Probation Monitoring Costs: Petitioner shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

10. Status of License: Petitioner shall, at all times while on probation, maintain an active, current license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If petitioner's license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

11. License Surrender While on Probation/Suspension: Following the effective date of this decision, should petitioner cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and

reasonable. Upon formal acceptance of the surrender of the license, petitioner will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the petitioner's license history with the board.

Upon acceptance of the surrender, petitioner shall relinquish his pocket and wall license to the board within ten (10) days of notification by the board that the surrender is accepted. Petitioner may not reapply for any license from the board for three (3) years from the effective date of the surrender. Petitioner shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including any outstanding costs.

12. Notification of a Change in Name, Residence Address, Mailing Address or Employment: Petitioner shall notify the board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Petitioner shall further notify the board in writing within ten (10) days of a change in name, residence address, mailing address, or phone number. Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

13. Tolling of Probation: Except during periods of suspension, petitioner shall, at all times while on probation, be employed as a pharmacist in California for a minimum of forty (40) hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, petitioner must nonetheless comply with all terms and conditions of probation.

Should petitioner, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California, petitioner must notify the board in writing within ten (10) days of the cessation of practice, and must further notify the board in writing within ten (10) days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for petitioner's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of practice" means any calendar month during which petitioner is not practicing as a pharmacist for at least forty (40) hours, as defined by Business and Professions Code section 4000 *et seq.* "Resumption of practice" means any calendar month during which petitioner is practicing as a pharmacist for at least forty (40) hours as a pharmacist as defined by Business and Professions Code section 4000 *et seq.*

Petitioner is required to practice as a pharmacist in a licensed pharmacy setting that dispenses medication for a minimum of one year prior to the completion of probation. After the first year of probation, the board or its designee may consider a modification of this requirement. If petitioner fails to comply with this requirement or a subsequent modification thereto, such failure shall be considered a violation of probation.

14. Violation of Probation: If a petitioner has not complied with any term or condition of probation, the board shall have continuing jurisdiction over petitioner, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If petitioner violates probation in any respect, the board, after giving petitioner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against petitioner during probation, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

15. Completion of Probation: Upon written notice by the board or its designee indicating successful completion of probation, petitioner's license will be fully restored.

16. Pharmacists Recovery Program (PRP): Within thirty (30) days of the effective date of this decision, petitioner shall contact the Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll, successfully participate in, and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the board or its designee. The costs for PRP participation shall be borne by the petitioner.

If petitioner is currently enrolled in the PRP, said participation is now mandatory and as of the effective date of this decision is no longer considered a self-referral under Business and Professions Code section 4362, subdivision (c)(2). Petitioner shall successfully participate in and complete his current contract and any subsequent addendums with the PRP.

Failure to timely contact or enroll in the PRP, or successfully participate in and complete the treatment contract and/or any addendums, shall be considered a violation of probation.

Probation shall be automatically extended until petitioner successfully completes the PRP. Any person terminated from the PRP program shall be automatically suspended by the board. Petitioner may not resume the practice of pharmacy until notified by the board in writing.

Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall result in the automatic suspension of practice by petitioner and shall be considered a violation of probation. Petitioner may not resume the practice of pharmacy until notified by the board in writing.

During suspension, petitioner shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Petitioner shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Petitioner shall not resume practice until notified by the board.

During suspension, petitioner shall not engage in any activity that requires the professional judgment of a pharmacist. Petitioner shall not direct or control any aspect of the practice of pharmacy. Petitioner shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

Subject to the above restrictions, petitioner may continue to own or hold an interest in any licensed premises in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

Petitioner shall pay administrative fees as invoiced by the PRP or its designee. Fees not timely paid to the PRP shall constitute a violation for probation. The board will collect unpaid administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

17. Random Drug Screening: Petitioner, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Petitioner may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times, petitioner shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, petitioner shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the petitioner. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a

documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of practice of pharmacy by petitioner. Petitioner may not resume the practice of pharmacy until notified by the board in writing.

During suspension, petitioner shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Petitioner shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Petitioner shall not resume practice until notified by the board.

During suspension, petitioner shall not engage in any activity that requires the professional judgment of a pharmacist. Petitioner shall not direct or control any aspect of the practice of pharmacy. Petitioner shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

Subject to the above restrictions, petitioner may continue to own or hold an interest in any licensed premises in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

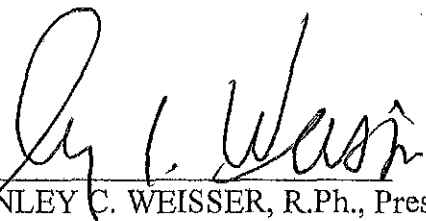
18. Abstain from Drugs and Alcohol Use: Petitioner shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board or its designee, petitioner shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the petitioner. Failure to timely provide such documentation shall be considered a violation of probation. Petitioner shall ensure that he or she is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

19. No Ownership of Licensed Premises: Petitioner shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Petitioner shall sell or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the

board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

Petitioner shall not acquire any new ownership, legal or beneficial interest nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any additional business, firm, partnership, or corporation licensed by the board. Violation of this restriction shall be considered a violation of probation.

DATED: May 9, 2014


STANLEY C. WEISSER, R.Ph., President
Board of Pharmacy
Department of Consumer Affairs